IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 53 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGALBHAI DEVABHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR PANKAJ K SONI for Petitioner

Mr K G Sheth, APP for Respondent No. 1

MR KETAN D SHAH for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

The present Revision Application has been filed by the petitioner-original informant under section 397 of the Code of Criminal Procedure, 1973 (for short, 'the Code') challenging the judgment and acquittal order dated

30.6.1999 passed by the learned Judicial Magistrate, First Class, at Mehsana in Criminal Case No.2450/95 under which the learned Magistrate passed an order acquitting the contesting respondents no.2,3,4 and 5 herein from offences punishable under section 161 and 162 of the Gujarat Panchayat Act, 1993. The case of the petitioner as original informant before the trial court was that the original informant as well as the contesting respondents no. 2,3, and 5 belonging to village Rampura in Mehsana Taluka in Mehsana District. The present petitioner has got his agricultural land situated in the said village. According to the case of the present petitioner, the incident took place on 15.11.1994. At that time the petitioner along with his brother had gone to take a round of his agricultural land and he had found that certain cattles were found to be grazing in his field and, therefore, the petitioner made efforts to see that the custody of those cattles is taken. However, as per the case of the petitioner, the contesting respondents prevented him from doing so. That on account of the aforesaid incident, the petitioner. as per his case, sustained a loss to the tune of Rs.1500/-. Therefore, FIR was filed on 16.4.1994 before Santhal police station for the said offence. The Investigating Officer undertook investigation and submitted charge-sheet before the learned JMFC, Mehsana on 4.4.1995 in respect of the aforesaid offence against the contesting respondents no.2,3,4 and 5. Learned Magistrate to whom the matter was transferred, supplied copies of police investigating papers to the contesting respondents. The plea was recorded and the contesting respondents pleaded not guilty to the charge. The evidence was recorded and further statements of contesting respondent were recorded under section 313 of the Code. However, the contesting respondents did not examine any witness. The arguments were heard and on conclusion, the learned Magistrate pronounced judgment on 30.6.1999 acquitting respondents no.2,3,4 and 5 of the aforesaid offence.

2. Feeling aggrieved by the said judgment and acquittal order of the learned Magistrate, the petitioner has preferred this revision before this court. It has been mainly contended here that the learned Magistrate has not properly appreciated the evidence and has committed illegality in acquitting the present respondents no.2,3,4, and 5. That the judgment and acquittal order are illegal and erroneous and deserve to be quashed and set aside. The petitioner therefore, prays that the revision be allowed and the judgment and acquittal order passed by the learned Magistrate be quashed and set aside and the present contesting

respondents no.2,3,4 and 5 be punished for the aforesaid offence.

3. I have heard Mr Pankaj Soni, learned Advocate for the petitioner and Mr K G Sheth, learned APP for respondent No.1 and Mr Ketan Shah, learned Advocate appearing for respondents no.2,3,4 and 5. Learned Advocate for the petitioner has taken me though the judgment of the trial court. It has been mainly contended on behalf of the petitioner that the learned Magistrate has not properly appreciated the evidence on record. It is also his argument before this court to the effect that the cattles of contesting respondents were found grazing in the field of the petitioner and though panchnama has supported the evidence of the petitioner, the learned Magistrate has committed serious illegality in not relying upon the evidence of the said witnesses and, therefore, the acquittal order is illegal. As said above, the learned Advocate for the petitioner has prayed that this revision be allowed and the present contesting respondents no.2,3,4 and 5 may be punished and convicted for offence punishable under sections 161 and 162 of the Gujarat Panchayat Act and to sentence them in accordance with law.

4. This would mean that the petitioner desires that this court, exercising powers, function and jurisdiction of revision under section 397 of the Code, should reverse the finding of acquittal and record a finding of conviction which is exactly impermissible in view of the provision contained in sub-section (3) of Section 401 of the Code which reads as follows:

> "(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction."

The aforesaid provision made in sub-section 3 of section 401 of the code makes it very clear that this court exercising powers of revision under section 397 of the Code cannot convert a finding of acquittal into one of conviction. In other words, when an accused person has been acquitted and the revision has been filed, then the revisional court cannot convict the person who has been acquitted by the trial court.

5. In above view of the matter, it is well settled that the finding of acquittal cannot be converted into a finding of conviction with the result that the person acquitted by the trial court cannot be convicted by revisional court under section 397 read with section

401(3) of the Code. It is then submitted that the trial courat has not properly appreciated the evidence on record. So far as the appreciation of evidence is concerned, it is not permissible under law for a revisional court to re-appreciate the evidence already appreciated by the trial court. In State of Gujarata v. Mansukhlal Chokshi, reported in 1993(2) GLH 849, it has been laid down that an Appellate Court hearing acquittal appeal should be slow and reluctant to interfere with the acquittal judgment, unless the same is perverse and eminently opposed to the evidence on record. It has also been laid down therein that when the Appellate Court agrees with the logic and reasoning of the trial court and confirms the same, it does not require to give detailed and lengthy reasons.

6. In the case of Ishwarlal v. State of Gujarat, reported in 1995(2) GLH (UJ-(1) 1 it has also been laid down that when two view are possible, then as a matter of judicial caution, the High Court should refrain from interfering with the order of acquittal as the trial court had a chance of seeing the demeanour of witnesses. Even otherwise, for a court exercising of powers of revision, it is not just, legal or proper to re-appreciate the evidence already appreciated by the trial court. Therefore, re-appreciation of evidence will not be permissible. It is not the case of the petitioner that some witnesses were omitted from consideration. It is not the case of the petitioner that some evidence was omitted for consideration. It is also not the case of the petitioner that some witnesses were yet to be examined. The Courts below have not closed the doors of the prosecution and the matter was not decided in the meddle of the trial. It is not the case of the petitioner that some inadmissible evidence was illegally admitted and considered by the two courts below. In other words, reasonable opportunity to prove its case was never denied to the prosecution at any point of time. Appreciation of evidence by the two courts is not shown or found to be illegal and perverse in asmuch as the decision is not against the weight of evidence on records.

6. I am of the opinion that the Court hearing Criminal Revision cannot interfere with an acquittal order even when the appreciation of evidence by the lower court is wrong. Therefore, it is not open to this Court exercising revisional jurisdiction to even remand the matter back to the trial court or to the court of appeal for reappreciation of evidence.

7. In the facts and circumstances of the case and in view of the above stated settled legal position, in my opinion, there appears no merit in the present Revision Application. It deserves to be dismissed.

8. In the result, this Criminal Revision Application is dismissed. Notice In the result, the present Revision Application is ordered to be dismissed. Notice discharged.

23.4.2001 [D P Buch, J.]
msp